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2 settlement and no global settlement agreement
3 would mean that the parties themselves, all the
4 inter-creditor issues would come to the forth
5 creditors would be suing each other, creditors
6 would all be suing ResCap. This case would go
7 on forever. Professional fees and the costs of
8 administering this estate are enormous.

9 And it seems to me that that will be
10 to the detriment of all competitors. And I
11 think that's not helpful. I think in my
12 business judgment this is a far better
13 alternative.

14 Q. So in your view that you would
15 consider what anybody asked you for a claim
16 amount, if that --

17 A. That's why I asked him whether
18 Ms. Lincoln was happy or -- I don't understand
19 that. You can't ask me that question that way.

20 Q. Let me ask you the question.
21 Are you saying then that in order to
22 allow that global settlement with all what you
23 believed to be the important benefits of that
24 global settlement to go forward, you'd give a
25 claim to somebody if they wanted it in exchange

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2 for the support for that settlement?

3 MR. KERR: Objection.

4 A. Of course not.

5 Q. Okay.

6 So what are the criteria you apply to
7 determine whether or not they should be getting
8 a claim?

9 A. The same one --

10 MR. KERR: Objection. Asked and
11 answered.

12 A. The same one I just gave before. In
13 my judgment, the arguments as to whether or not
14 the claims of FGIC or the trust should be
15 equitably subordinated, could be subordinated
16 under the Bankruptcy Code, whether alter ego
17 arguments are possible, whether aiding and
18 abetting arguments are possible, all of those I
19 believe are the subject of litigation that
20 would be time consuming, costly, destroy the
21 global settlement agreement, and ultimately not
22 be for the benefit of the creditors for this
23 estate or for the estate of which I'm
24 responsible.

25 So, in my mind, a global settlement

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2 agreement is a far better outcome.

3 Q. I got time consuming. We're all
4 caught up in time consuming right now. I want
5 to talk about the merits. The merits.

6 Does a \$331 million claim at ResCap,
7 LLC reflect, in your view, the merits of
8 litigating a \$596 million claim to conclusion?

9 MR. KERR: Objection.

10 MR. WYNNE: Objection. Asked and
11 answered. Mischaracterizes his testimony.

12 A. I think I've answered that question.

13 Q. Answer it again, please.

14 MR. KERR: Objection. Asked and
15 answered.

16 BY MR. SHORE:

17 Q. That's your objection.

18 You can answer it again.

19 A. In my mind, as I've had said before,

20 I think the \$337 million claim in the context
21 of the global settlement agreement is an
22 appropriate resolution as part of the mosaic of
23 the global settlement agreement and is
24 appropriate under the circumstances as
25 reasonable and appropriate.

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2 Q. That wasn't my question. That's why

3 I wanted you to answer my question.

4 Does \$337 million reflect your
5 understanding of the likely result or within
6 the range of results that would occur if
7 independent of the global settlement FGIC
8 pressed its \$596 million claim?

9 A. I don't know the answer to that
10 question.

11 Q. Okay.

12 Let's focus on the disclosure
13 statement. Did you play any role in the
14 drafting of the disclosure statement sections
15 that discuss substantive consolidation?

16 MR. KERR: Objection. Objection.

17 This is not the time to be talking about
18 disclosure of planned confirmation issues.

19 All right? And if you're not going to
20 focus on the FGIC settlement, I will direct
21 him not to answer and Judge Glenn, I think,
22 will support me down the line on it.

23 BY MR. SHORE:

24 Q. Well, let me ask you this question.

25 Is there any basis for allowing FGIC

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2 Hypothetical creditor who asserts a
3 claim at GMACM Mortgage and at ResCap, LLC, on
4 alter ego theories, shouldn't they also be able
5 to get a claim at G -- sorry -- at ResCap, LLC?

6 MR. KERR: Objection. I'll direct
7 him not to answer that question.

8 MR. SHERWIN: On what basis?

9 MR. KERR: That's a hypothetical. It
10 has to do with planned confirmation. It
11 has nothing to do with the FGIC Settlement
12 Agreement.

13 MR. SHORE: Let me take a quick
14 break.

15 MR. KERR: Sure.

16 (Recess taken from 2:03 p.m. to
17 2:09 p.m.)

18 BY MR. SHORE:

19 Q. All right.

20 If you could turn to the Iridian
21 (phonetic) factors, which start on page 11.

22 We've gone through the -- with
23 respect to A, right, the balance between the
24 possibility of success, I take it that you're
25 following your counsel's instruction that

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2 case; right, that proof of claim?

3 MR. KERR: Objection.

4 A. I don't know how much of that is
5 spent in litigating that proof of claim, but it
6 was part obviously of the global settlement
7 agreement, and that's what motivated me in part
8 to apply for a claim at the ResCap level. And
9 the recognition that if there were to be
10 litigation, there would obviously be no global
11 settlement agreement, and the litigation would
12 be both time consuming, costly and uncertain
13 outcome.

14 Q. Okay.

15 Did you have any views, form any
16 views of what it would take, how much it would
17 cost to litigate the FGIC issues at the time
18 you entered into the settlement agreement?

19 A. I was aware that there had been MBIA
20 litigation against ResCap prior to the filing
21 of the petition and had gone for three and a
22 half years. So I assumed this was going to be
23 a lengthy litigation, as well. I believe in
24 the MBIA more than a million documents were
25 produced. This looks to me like complex and

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2 long-term litigation.

3 Q. Okay.

4 Other than your knowledge that the
5 MBIA litigation had gone on for three and a
6 half years, did you have any other view, any
7 other basis on which you formed your
8 conclusions that it would be a complex and
9 protracted litigation?

10 A. I had read, I think I referred to
11 before, the Carpenter Lipps report, memorandum.
12 That's what informed my view.

13 Q. Just so we are clear. I forgot to
14 ask this question before.

15 The NewOak analysis, Dr. D'Vari, did
16 you have that before you decided to enter into
17 the settlement agreement?

18 A. No, I did not.

19 Q. Okay.

20 Had they performed any analysis for
21 you prior to the entering into the settlement
22 agreement?

23 A. Not for me, no, they did not.

24 Q. Okay.

25 So I take it that your decision to